

09-20-06

DAC/IFW

Attorney Docket No.: HSS30

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 10/656,080

ART UNIT: 3745

FILING DATE: September 5, 2003

EXAMINER: Christopher M. Verdier

INVENTOR: Heribert Vogel

TITLE: Rotor System for a Remotely Controlled Aircraft

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 CFR 1.183 TO SUSPEND 37 C.F.R. 1.55(a)(2)****Action Requested:**

Applicant petitions the Commissioner to suspend 37 C.F.R. 1.55(a)(2) and accept a copy of a German priority application DE10110659.9 that is certified as a true copy by the World Intellectual Property Office ("WIPO") instead of by the German Patent Office.

**Statement of Facts:**

The German Patent Office has destroyed the original priority application, and cannot provide a certified copy. Attached is a certificate from the German Patent Office stating that DE10110659.9 has been destroyed. The certificate from the German Patent Office, entitled (as translated) "Certification of Priority DE 101 10 659.9 Concerning the Filing of a Patent Application," states (as translated): "The record of this patent application was destroyed without previously having been made public." Also attached is a copy, certified as a true copy by WIPO, of DE10110659.9 as certified by the German Patent Office.

German application DE10110659.9 served as a priority document for PCT/EP2002/02154. The present application was filed as a continuation under 35 USC § 120 of PCT/EP2002/02154, which designated the United States. A copy of German Application DE10110659.9, certified by the German Patent Office, was provided to and accepted by the International Bureau of WIPO in connection with PCT/EP2002/02154. WIPO has provided

Adjustment date: 10/11/2006 CKHLOK  
09/21/2006 NNGUYEN1 00000004 10656080  
01 FC:1464 -130.00 OP  
10/11/2006 CKHLOK 00000005 501635 10656080  
01 FC:1462 270.00 DA 130.00 OP

09/21/2006 NNGUYEN1 00000004 10656080  
01 FC:1464 130.00 OP  
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Application No.: 10/656,080  
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applicant with the attached copy of DE10110659.9 certified by WIPO as a true copy. A certified copy of PCT/EP2002/02154 has also been filed in connection with the present application.

The requirement for a certified copy of the foreign application is not a statutory requirement and can therefore be waived by the Commissioner. 35 U.S.C. § 119(b)(3) states: "The Director may require a certified copy of the original foreign application . . . as the Director considers necessary." [Emphasis added.]

The destruction of the priority application by the German Patent Office is an extraordinary circumstance such that justice requires waiving the requirement for a copy certified from the German Patent Office, because the certified copy is unavailable and there is no alternative avenue available to applicant to perfect the priority claim.

It is not clear whether applicant could still enter the national phase under 35 USC § 371 using a Petition to Revive an Unintentionally Abandoned Application, because at the 30 month deadline for entering the national phase, applicant intended to file the present continuation application.

There is no adverse impact to the public by the granting of this petition. A copy of DE10110659.9, certified as a true copy by WIPO, is now in the US prosecution file and is accessible to the public. Moreover, an electronic copy of DE10110659.9 is available on-line through the European Patent Office's [www.epoline.org](http://www.epoline.org) web site. There is no question of the authenticity of the copy of DE10110659.9, as it was originally certified by the German Patent Office and accepted by WIPO, and is now certified as a true copy by WIPO. Lastly, the public has the same access to the priority document that it would have had if applicant had entered the national phase under 35 USC § 371.

Timeliness:

This Petition is being filed within two months of discovering that the German Patent Office has destroyed the file and before payment of the Issue Fee.

Fee:

The petition fee under 37 C.F.R. § 1.17(h) is attached.

Application No.: 10/656,080  
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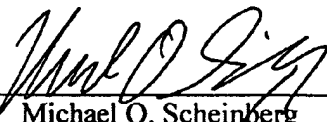
Applicant believes that no processing fee under 37 CFR § 1.17(i) is required because the copy of DE10110659.9 and this petition are being filed before payment of the issue fee. If, however, the office believes that an additional fee is required, the Commissioner is authorized on the attached fee transmittal to charge any required fee or credit any over payments to Deposit Account 50-1635.

Conclusion:

Applicant submits that the destruction of the priority document by the German Patent office presents an extraordinary circumstance and that the interests of justice require that 37 C.F.R. 1.55(a)(2) be suspended, and that the Commissioner accept applicant's priority claim with a copy of DE10110659.9 certified by WIPO.

Respectfully submitted,

9/19/06  
Date

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Attachments:

1. Certified Statement from German Patent Office with regard to unavailable of a certified copy of DE10110659.9.
2. Copy of DE10110659.9 certified by WIPO